

TITLE 327 WATER POLLUTION CONTROL DIVISION

LSA Document #13-245

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from April 9, 2014 through May 9, 2014, on IDEM's draft rule language. IDEM received comments from the following parties:

Marita Fields (MF)

Bowden Quinn, Sierra Club Hoosier Chapter (SCHC)

E. Daniel Cox (EDC)

Kim Ferraro, Hoosier Environmental Council, Bowden Quinn, Sierra Club Hoosier Chapter, and Dave Menzer, Citizens Action Coalition Education Fund (HEC)

Barbara Sha Cox (BSC)

Justin T. Schneider, Indiana Farm Bureau, Joshua D. Trenary, Indiana Pork Advocacy Coalition, and Andy Tauer, Indiana Soybean Alliance and Indiana Corn Growers Association (IFB)

Elizabeth Mahoney, EM Design (EM)

Leslie Patterson, (LP)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: The citizens of our State need to be protected from any possibility of economic or recreational destruction as in the devastation at Grand Lake in St. Mary's, Ohio. I have read that their officials are encouraging the export of animal manure to neighboring states. I am happy to see that we have realized the seriousness of this potential problem. (MF)

Response: IDEM cannot speculate on what Ohio officials may or may not be encouraging. IDEM has drafted rule language for the construction, operation and maintenance of a satellite manure storage structure (SMSS) at the direction of the Indiana General Assembly to comport with IC 13-18-10.5. IDEM believes that the draft rule protects human health and the environment from threats to water quality.

Comment: Because satellite storage structures may be located in remote areas not subject to daily or even weekly observation, the rules controlling their operation should be more stringent than those for similar structures on confined feeding operations. (SCHC)

Response: IDEM believes that the manure storage requirements in the existing confined feeding operations (CFO) and concentrated animal feeding operations (CAFO) rules are protective of Indiana's environment and does not think that more stringent measures are necessary, except in individual cases based on the siting of a SMSS or other circumstances related to the individual SMSS.

Comment: The commenter believes that the definition of manure in 327 IAC 19-2-25, which has been incorporated in the draft rule language, is broad. The rules should be stricter than what is proposed in the draft rule language to better achieve the purpose of protecting human health and the environment from threats to water quality. The commenter believes manure is more dangerous than human waste and therefore, should be regulated similarly to human waste or more stringently. (HEC)

Response: Manure is defined by Indiana statute at IC 13-11-2-126.5. That definition informs the extent of IDEM's regulatory power related to regulation of manure storage and handling. That definition is incorporated in the CAFO and CFO rules and is the definition IDEM must use related to the regulation of a SMSS. A SMSS serves the same function as a manure storage structure at a CAFO and CFO. IDEM believes that the manure storage requirements in the existing CFO and CAFO rules are protective of Indiana's environment and does not think that more stringent measures are necessary, except in individual cases based on the siting of a SMSS, or other circumstances related to the individual SMSS

Comment: They should be located at least one mile from residential homes, schools, hospitals and nursing home property lines or our water sources. (MF) A SMSS should only be permitted within 500 feet of the owner or operator's personal residence. (EDC) A SMSS must be no less than 4 miles from any other public water supply, well or surface intake structure, surface water, ground water, drainage inlets, sink holes, flood plain, water wells, other residences and public buildings, or other residentially zoned districts and municipalities. (EDC)

Response: The proposed setbacks are equivalent to those provided for other manure containment structures in both the CFO and CAFO regulations. IDEM believes these setbacks are protective of Indiana's water resources and human health.

Comment: Setbacks are not adequate to protect the environment and public health. Environmental and public health issues should be the key concern. (BSC, EM, LP) The proposed setbacks in 327 IAC 20-5-1(d) are not adequate to protect public health and the environment from spills, leaks and run-off of manure from SMSSs. Even with a storage capacity to accommodate expected precipitation, several days of rain can compromise a manure storage structure because steady rainfall weakens berms and prevents the excess wastewater from being sprayed on already saturated fields. (HEC)

Response: Each person building a SMSS is required to take into consideration storm events and the containment thereof when designing the SMSS and is required to build storm containment for any stormwater that is contaminated by manure. Further, the owner is required to maintain the structure to assure that the structure remains sound and properly contains the stored manure. This regulation does not deal with land application of the stored manure. The regulation is focused on the proper design and maintenance of a SMSS.

Comment: The draft rule at 327 IAC 20-5-1(e) should be amended to require that any waiver of setbacks from residences or property lines by adjoining property owners be recorded as a notation on the deed to the property on which the SMSS is located, or on some other instrument

that is normally examined during title search as required by 327 IAC 6.1-8-3(c). (HEC)

Response: A deed restriction on the property containing a SMSS does not provide any information for potential purchasers of property from which a waiver has been obtained because the information would not be on the deed of that property. It is therefore unclear how requiring such a restriction would provide information of any value to potential purchasers of properties adjoining the SMSS property. Nothing in this rule prevents such a deed notation from being entered on the deed of the property containing the SMSS.

Comment: The draft rule in 327 IAC 20-5-2(a) proposes to allow SMSS lagoons to dangerously sit a mere two (2) feet above bedrock and the “seasonable high water table.” In stark contrast, human waste lagoons must be a minimum distance of ten (10) feet above bedrock and four (4) feet above the water table unless it can be demonstrated that the water table has been artificially lowered to four (4) feet or more from the bottom of the lagoon. There is simply no reason for this disparity and the final SMSS rule should impose a similar requirement. (HEC)

Response: The waste lagoons associated with waste water treatment plants merit a higher degree of protection as these waste streams are mixed streams that also include industrial wastes. The cited rules reflect the recommended ten-state standards for such facilities. The proposed rule for SMSSs is consistent with the requirements for animal waste storage found in the existing state CFO and CAFO regulations, which are consistent with Natural Resource Conservation Service (NRCS) recommendations.

Comment: The final SMSS rule should prohibit the storage of vast quantities of liquid manure in unlined, earthen lagoons. At minimum, mirror those that apply to lagoons used to store human waste set forth in 327 IAC 6.1-8-6. To prevent damage to SMSS lagoon liners, and prevent stormwater intrusion and runoff, the requirements of 327 IAC 6.1-8-6(6)-(8) should be incorporated into the SMSS rule. (HEC)

Response: Earthen structures are allowed under the draft rules only when they are constructed and maintained in accordance with design requirements spelled out in the rule. Construction may not be in certain soil types without an approved liner. The storage of manure in a SMSS is based on requirements currently found in Indiana’s CFO and CAFO regulations which have the same types of storage structures. Construction standards for a SMSS mirror those requirements.

Comment: Manure should not be stored in karst areas or in floodplains because of the heightened risk of water pollution in these areas due to extreme precipitation events, which the recently released Third U.S. National Climate Assessment finds are becoming more frequent, or other causes of structural failure. Therefore, the exceptions to the prohibition of construction of SMSS in these areas provided in 327 IAC 20-5-1(b) and (c) should be removed. (SCHC)

Comment: Regarding 327 IAC-20-5-1, a SMSS should NEVER be located in karst terrain or in a 100 year flood plain. This determination should not be made by any IDEM Commissioner, it should be stated without any provisions or chance for waiver. (BSC)

Comment: Draft rule provisions 327 IAC 20-5-1(a)(c) allow construction of SMSSs in

karst terrain, one hundred year flood plains, and in soil types expected to have a seasonal high water table. The commenter is concerned that private well users will experience groundwater contamination if a SMSS is constructed in karst areas, flood plains and in sandy soils, and spills, leaks, and overflows occur. The commenter urges that the draft rule strictly prohibit construction of SMSSs in these areas. (HEC)

Response: While the rule does not prohibit locating of a SMSS in karst terrain or within a 100 year flood plain specifically, the rule requires that additional characterization of the potential site must be completed, including information on the seasonal high water table and design and construction specifications that assure adequate structural integrity and environmental protection prior to IDEM allowing the siting of a SMSS in such an area. If the commissioner deems the plans inadequate to protect human health or the environment, he may deny the construction of the SMSS. The commissioner may also require additional information prior to allowing the use of such a site if there is any question as to whether the SMSS will be sited and constructed to assure environmental protection.

Comment: If storage facilities are allowed to be located in karst areas, the setback from sinkholes should be measured from the perimeter of the sinkhole, not from the “surficial opening or lowest point of the feature,” as stated in 327 IAC 20-5-1(d)(2)(C). (SCHC)

Response: Proposed setback distances are the same as those found in the CFO and CAFO regulations. IDEM believes this is protective of waters of the state and human health.

Comment: A financial assurance package should be included with application. (BSC, LP)

Comment: Owner of SMSS should be required to be responsible for any damage caused by rerouting of drainage. (BSC)

Comment: I happen to know that some of the farm businesses do go bankrupt and leave without making arrangements to clean up their messes. It is not fair for the County taxpayers to pay for the clean-up. This should be addressed. Also, if a property is transferred, who is the obligated party? (MF)

Response: Currently, IDEM does not have the authority to require financial assurance from owners and operators of SMSS operations. Any person who is permitted to operate a SMSS is liable for environmental damage that occurs from that operation during the term of the permit. Upon transfer of the property, responsibility for environmental harm rests with the property owner. The draft rule does contemplate a change in ownership of a SMSS and allows for the transfer of the existing permit if done in accordance with the draft rules. IDEM regulation cannot infringe on private property or contract rights. However, IDEM does have the authority to investigate and order the cleanup of environmental contamination regardless of whether the activity causing the environmental harm is the subject of a permit. A permit does not give any person license to cause damage to another person’s property.

Comment: The requirements for solid manure storage structures contained in 327 IAC 20-5-4 are inadequate to protect the environment from contamination. All such structures should

have roofs that prevent rainwater from contacting the manure. Stormwater controls, as allowed by 327 IAC 20-5-4(1)(b), cannot be relied upon to prevent the manure from overflowing in extreme rain events. (SCHC)

Response: Structures containing solid manure are required to be covered to prevent rainwater from coming into contact with the solid manure or contain any rainwater that comes into contact with the manure. Any stormwater that comes into contact with the manure being stored must be contained. All structures containing liquid manure are required to maintain a minimum of 2 feet of freeboard, as is required for all other regulated manure containment structures under the state CFO and CAFO regulations. Additionally, each SMSS must maintain an emergency response plan that includes a plan to address overflows of manure in extreme rain events and spills that eventually reach waters of the state. Each operation is required to maintain the emergency plan, as well as document any responses to manure releases or spills in accordance with the draft rules.

Comment: Regarding 327 IAC-20-5-4, all solid manure structures should have concrete floors. (BSC, EM, SCHC).

Comment: All solid manure structures should potentially have concrete sides. (EM)

Comment: Given the likelihood that heavy equipment could be used to remove the manure for transport to another location, the liners allowed by 327 IAC 20-5-4(2) would be susceptible to damage, allowing the manure to contaminate the soil and groundwater beneath them. (SCHC)

Response: The draft rule requires that manure structures containing solid manure be constructed in accordance with the NRCS construction standards being incorporated into the rule. These standards include liner requirements when constructing in certain soil types. The rule requires that the integrity of the structure be maintained at all times to prevent environmental impacts. Damage to either the structure or the liner that causes any type of discharge would violate the permit and require corrective action.

Comment: Regarding 327 IAC 20-5-5, free board should be at least 3 ft. (BSC, EM)

Comment: Allowing liquid manure storage structures to maintain only two feet of freeboard [327 IAC 20-5-5(b) and 20-6-1(c)(1)] is inadequate given the possibility that these structures could be in remote locations and the increased frequency of heavy rain events. The freeboard should be at least three feet in these structures. (SCHC)

Response: The 2 feet of freeboard requirement is consistent with how manure storage structures are regulated under Indiana's CFO and CAFO programs. IDEM believes that the requirement to continually maintain a 2 foot freeboard is protective of the environment.

Comment: The provision at 327-IAC-20-3-1(2) should read "to prevent leaks and seepage" not simply minimize as this is too abstract. (EM)

Response: No structure can completely prevent all leaks and seepage. Even concrete and liner standards allow for a certain extremely minor amount of seepage given the nature of the material used. The amount of seepage allowed is specified in the rule and is not, therefore,

abstract.

Comment: IDEM should be required to inspect during construction. (BSC)

Comment: There should be IDEM inspections that are defined by the rules, done by IDEM employees, and done on a regular basis. (MF)

Comment: Regarding 327 IAC-20-3-2(5), inspections by IDEM should be included on set times 6 months to 2 years etc. and they should be mandatory, not just if IDEM has the manpower to do so! (EM)

Comment: Regarding, 327 IAC 20-5-7, IDEM should inspect prior to any operation of SMSS. (BSC, EM, LP)

Response: IDEM requires 2 days notice prior to construction being started to allow time for inspection, if necessary. Also, IDEM may inspect a facility at any time during construction or operation of a facility. The number of staff required to inspect all regulated entities in Indiana makes it infeasible for IDEM to require inspection at specific times or meet a specified number of annual inspections for all regulated entities.

Comment: Regarding 327 IAC-20-7-1 and 327 IAC 20-7-2, IDEM should inspect a SMSS being removed from the program. (BSC, EM, LP)

Response: 327 IAC 20-7-3(c) requires the commissioner of IDEM to send a letter verifying that the permit holder has met the requirements for decommissioning and exiting the program.

Comment: If there are any violations, IDEM should not allow operation until violations are addressed and then inspected again. The county building inspector should be notified and included in review. (BSC, LP)

Response: Not all violations require the stoppage of an operation. In this case, the operation is primarily the storage of manure. If there are violations that indicate the storage structure is not built or maintained in a manner to ensure environmental protection, IDEM will use its authority to ensure that the issue is resolved and any inadequacies are addressed.

Comment: Regarding 327 IAC 20-5-5, the owner should be required to send to IDEM an inspection report on a routine basis. (BSC, LP)

Response: The draft rule requires monthly inspections of the structures, as well as documentation of all maintenance and emergency response activities. IDEM staff has access to that information when visiting the site. Sending IDEM inspection reports does little to ensure the operations are being operated and maintained in an environmentally sound manner.

Comment: Regarding 327 IAC 20-7-2, subsection (c) shall read “shall” instead of “may”. (BSC, EM, LP)

Response: The commissioner maintains discretionary authority to require additional information be submitted, as well as additional decommissioning activities be performed, if there is evidence of environmental contamination as a result of the permitted activities.

Comment: Regarding 327 IAC-20-3-2(c), "may" should be "shall" as should be the clear responsibility of the Commissioner. (EM)

Response: The Commissioner has the somewhat broad authority to secure compliance with Title 13 of the Indiana Code. As such, the commissioner "may" require additional information be submitted or additional activities be undertaken to correct an environmental issue. However, each program is also governed by specific statutory authorities. The role of the regulation is to spell out the requirements that an applicant must meet to obtain and maintain a permit for a specific activity. Because each situation may involve fact-specific and site-specific circumstances, providing the Commissioner with the ability to require additional information or activities as befits a specific situation is in keeping with the general authority to protect human health and the environment, as well as the specific statutory limitations within which IDEM's regulatory programs operate.

Comment: The terms owner/operator is vague. It is unclear who will be held responsible in case of spills etc. Clarification of the responsible party should be defined. (BSC, LP)

Response: The person who seeks and holds a permit to operate a SMSS is ultimately responsible for maintaining the operation within the requirements of the rules and the permit. Because certain land owners may contract with an operator to construct and run a SMSS, the permit holder would likely be the operator in that circumstance. Ultimately, a property owner is liable for environmental harm caused by activities on land he or she owns if no other responsible party is available. However, if an operator holds the permit for a SMSS that is either constructed or maintained improperly, resulting in environmental damage, that permit holder will be held responsible to take corrective action.

Comment: Any violation in Indiana or out of state would and should be a reason for denying the application. (BSC, LP)

Response: The "good character" requirements found at IC 13-18-10 for confined feeding operations do not apply to SMSS owners and operators. The SMSS permit program is governed by the provisions of IC 13-15.

Comment: Regarding 327 IAC 20-4-3(c) and 327 IAC 20-4-3(c), an incomplete application shall be denied, not may. (BSC, EM, LP)

Response: In certain cases, the nature of the incomplete application may be so minor that denial is not necessary. In other cases, the application may be so devoid of information that even after repeated attempts to obtain complete information, the department has no choice but to deny the application. The language in the draft rule mirrors the statutory language found at IC 13-15-4-9 which is the statute that governs how and when the Commissioner may deny an incomplete application. The SMSS permit program is governed by the provisions of IC 13-15.

Comment: Regarding 327 IAC 20-4-2, the permit should be for a maximum of 5 years and renewed only after IDEM inspections. (BSC, EM, LP)

Comment: Permits should preferably be less than 5 years. (EM)

Response: An initial permit issued under IC 13-15 may be issued for up to five years. Under IC 13-15-3-2, an activity of a continuing nature, which the storage of manure is, may be renewed for up to ten years.

Comment: Regarding 327 IAC-20-6-2, records should be sent to IDEM on specified dates and include the volume of manure and the farm where it originated. (BSC, EM, LP)

Comment: All records that SMSSs' owners/operators are required to maintain to document compliance should be submitted to IDEM instead of being maintained by the owner/operator. Requiring the SMSS's owner/operator to "maintain an operating record" does not ensure that IDEM will have access to the information, much less impacted citizens who should have access to these records as well. (HEC)

Response: IDEM has access to all information in the operating record upon entering any SMSS site. The maintenance of an operating record on-site mirrors requirements for monitoring manure storage and handling requirements at state regulated CFO facilities. Maintaining extensive records on volume and origin is not a necessary component of maintaining an environmentally sound storage structure. This regulation does not set land application standards nor manure testing standards, where requirements for sampling to assure proper nutrient application and uptake on the fields upon which it is to be land applied are more appropriate.

Comment: In the operating record section at 327 IAC 20-6-2(8), a number of years for the retention of this documentation should be included. We recommend "within the permit term" similar to the language in 327 IAC 20-6-2(7). (IFB)

Response: IDEM agrees that clarification as to the amount of time documents must be kept as part of the operating record would be beneficial. Certain documents may appropriately be kept for only the duration of the current permit term. However, other documents including the site plan, registered professional engineer (RPE) certification, construction notarizations and documented maintenance activities may very well be necessary to be maintained beyond the current permit term. IDEM has amended the draft rules to clarify time frames for document retention.

Comment: At 327 IAC 20-1-2(a) and 327 IAC 20-2-3, the definition of "Satellite Manure Storage Structure" should be a reference to the statutory definition at IC 13-11-2-196.2. While the definition proposed at 327 IAC 20-2-3 is identical to the statutory definition currently, a reference to the statutory definition will ensure that the definition stays consistent in the event the rule or the statute is modified in the future. (IFB)

Response: IDEM agrees that simply referencing the statutory definition would mean that the rule would always be consistent with the statute. The statutory definition was spelled out in the draft rule for ease of comprehension for all interested parties. IDEM has referenced the statutory definition since both are identical.

Comment: The term "manure containment capacity" is not defined but is used in 327

IAC 20-1-2(b)(2). We believe that this term is best defined as an increase in the size of the storage structure so that the maximum capacity is increased regardless of how much volume of manure is currently being stored in the structure. (IFB)

Comment: The term “associated structures” used at 12-1-2(c)(2) is not defined. It is necessary that individuals understand which structures should be included as “associated structures” for the purpose of determining volume. We suggest that this information be clarified through addition of a definition in the rule, more explanation in 327 IAC 20-1-2(c)(2), or through non-rule policy. The clarification should address how the determination will be made if an item is an “associated structure” and the scope of geographical area which will be included. (IFB)

Response: IDEM has removed reference to “associated structures” and has revised the rule language to clarify that any component of the SMSS is considered part of the SMSS in accordance with the governing statutes.

Comment: The terms “manure release” and “spill” are both used in 327 IAC 20-3-1 and then periodically throughout the document. The term “spill” is unnecessary. A “spill” is defined at 327 IAC 2-6.1-4(15) and refers to leakage, discharge, etc. of petroleum, hazardous substances, extremely hazardous substances, or objectionable substances. A “manure release” is defined at 327 IAC 19-2-27 as leakage, discharge, etc. of manure outside of an approved waste management system. The concern with a SMSS would be a manure release. We are only dealing with manure from a manure storage structure. That approach should be taken throughout the rule. (IFB)

Response: A “spill” as defined at 327 IAC 2-6.1-4(15) applies to any substance listed, including petroleum, hazardous substances and “objectionable substances”. Objectionable substances include substances that are of a quantity and a type, and present for a duration and in a location so as to damage waters of the state (327 IAC 2-6.1-4(11)). The draft rule attempts to draw a distinction between a manure release and a spill in that many manure releases are in the proximity of the storage structure, which may be more easily contained and cleaned up. Whereas, a spill is usually considered an event that causes a threat to waters of the state should the substance reach waters of the state. While a small amount of manure may not be an “objectionable substance” as that term is defined for purposes of the spill rule, it still must be contained and cleaned up under this rule. In addition, in a sufficient amount, manure can be considered an “objectionable substance” should its release enter or threaten to enter a water of the state. The concept embodied in the spill rule is contained in the requirement for an emergency response plan which mirrors spill rule requirements. The spill rule has broad applicability and does apply to sources regulated under this rule. However, compliance with the requirements of the emergency response plan section at 327 IAC 20-6-3 would meet spill rule requirements.

Comment: The requirement to document compliance with all state and local zoning laws is mentioned at 327 IAC 20-4-1(b)(8). That provision is outside the scope of this rulemaking. This provision should be removed. The applicant and the county should deal with the zoning issues as a separate matter. (IFB)

Response: IC 13-15-3-5, the area of the Indiana Code that governs the issuance of SMSS

permits, among other IDEM permits, requires that a permit may be issued only after the department has approved the plans and specifications and determined that the facility meets the requirements of the rule. Further, the statute states that a person may not start construction until the person has obtained any approval required by any county, city or town in which the facility is located. IDEM, by requiring documentation of compliance with local zoning laws within the rule, is assuring the local approval has been obtained prior to the issuance of a construction permit. IDEM maintains this authority under IC 13-15 -2-1 and IC 13-15-3-5. IDEM understands that certain local boards may require proof of IDEM approval prior to granting zoning approval and is willing to discuss ways to ensure that the applicant meets both IDEM application requirements and local zoning approval requirements when necessary.

Comment: Under the design requirements at 327 IAC 20-5-2(a)(3)(B)(iii), there is no reference back to the provisions in 327 IAC 20-5-1(b) for earthen structures in karst areas. We propose inserting the reference similar to how the CFO rule is structured. The once monthly inspection is reasonable. (IFB)

Response: IDEM agrees that a reference back to section 1 is necessary because construction of either a concrete or earthen structure in karst terrain is only allowed in very specific circumstances and spelling those out as clearly as possible is a goal of the rule.

Comment: In our initial comments, we urged IDEM to draft a SMSS rule that addresses the likelihood that there will be multiple users of a particular SMSS who could escape accountability for spills and discharges in their use of the SMSS if not subject to all permit requirements. To that end, we urged IDEM to require the following information as part of the SMSS permit application process:

- X - phone number and mailing address of the owner/operator and each user of the SMSS;
- X - the past environmental compliance history of the applicant, owner/operator (if different from the applicant) and each user;
 - the physical location and GIS coordinates of the proposed SMSS;
- X - the amount and type of manure (i.e. swine, cattle, poultry) to be contained and identity of the generating source(s);
- X - the capacity of the land application area(s), if any, that will accommodate the structure's manure;
- X - all features of the SMSS for animal waste transfer and associated land application;
- X - all adjacent landowners and those within one (1) mile of the boundaries of the property on which the SMSS will be located;
 - a site plan which includes, at a minimum, locations of ditches and conveyances, surface waters, well heads, hydrologically sensitive and critical areas, a topographic map of the site including any steep slopes or highly erodible land, and all features for the management and containment of waste including buffers, filter strips, discharge locations, as well as a soils map for the SMSS and all associated land application areas;

X - a waste storage and management plan (WSMP) that contains: structural engineering requirements including requirements for operation and maintenance, work practices, inspections, record-keeping and reporting, and exertion of due diligence that exceed the requirements of 327 IAC 19-7-5; and work practice and bright line compliance requirements for making land application decisions related to nutrient budgets, manure and soil testing, weather conditions, and runoff avoidance consistent with 327 IAC 19-3-1(f) and 327 IAC 19-14;

X - a mandatory groundwater monitoring plan consistent with the requirements of 327 IAC 19-10-1;

X - a site-specific storm water management plan exceeding the requirements of 327 IAC 19-11-12;

- an emergency response plan consistent with 327 IAC 19-13-4;

X - a closure plan consistent with 327 IAC 19-15-2.

The items above marked with an X were not included in the draft rule but should be. (HEC)

Response: IDEM does not see the efficacy of requiring information be kept on each source of manure stored at the SMSS. Again, this rule is not about land application of the manure, rather it is about environmentally sound construction and maintenance of storage structures to ensure that the manure is properly contained. These facilities may sell the manure to custom applicators who remove the manure and land apply it for clients across the state. The individual nutrient requirements of each field upon which the manure is land applied is regulated by the Indiana Office of the State Chemist, as well as by Indiana's CFO rules for CFO operations that land apply manure that derives from the CFO. This program is not the CFO program, which operates under IC 13-18, and the "good character" requirements under that program do not apply to persons wishing to construct a regulated SMSS, which operates under IC 13-15. The construction requirements under this rule are almost identical to the requirements for manure storage structures at Indiana's regulated CFO and CAFOs, because a SMSS serves the same function as a manure storage structure at a CAFO and CFO. IDEM believes those standards are protective of Indiana's water resources. Additionally, permit holders are required to maintain the integrity of these structures at all times to remain in compliance with the permit and the rules.

Comment: IDEM drafted a rule that merely requires SMSS permit applicants to "make a reasonable effort to provide notice" to the county executive and landowners within ½ mile of the SMSS property. Aside from the fact that landowners within three miles of a SMSS could be impacted and should receive notice, without required notice to the public (i.e., newspaper notice and signage at the SMSS property prior to construction), the provision of a public comment period is meaningless. The public comment period is rendered meaningless in the draft rule by the fact that IDEM need only "accept" written comments but does not have to consider or respond to them. A concerned community might be able to air their concerns at an IDEM public meeting, but not a formal public hearing. The commenter urges mandatory public notice and

commenting requirements similar to those required under the NPDES program. (HEC)

Comment: Regarding 327 IAC 20-4-5, if there are environmental concerns, a public meeting should be held. The decision should not be at the discretion of Commissioner. (BSC, LP)

Response: The public notice requirements in the draft rule mirror the statutory requirements found at IC 13-18-10.5-3, which specifically addresses this issue. Notification requirements under IC 13-15-8-2 for other types of IDEM permits only require notification to adjoining land owners as opposed to all landowners and occupants within one half mile of the SMSS facility. The public notice and hearing requirements mirror the statutory requirements found at IC 13-15-5-1, which are the requirements under which this permit program operates.

Comment: No SMSS should have a discharge pipe allowing the release of contaminated water. The commenter suggests that 327 IAC 20-5-2(e) have an “or” separating clause (1) and (2) rather than an “and”. (SCHC)

Comment: There is a drafting error at 327 IAC 20-4-5(b)(3). The reference should be to subsection (c), not (e). (IFB)

Response: IDEM agrees and has made the changes suggested.